

REMARKS

Claims 11- 27 remain pending in this application. Claim 11 is independent. Claims 11- 27 have been amended. No claims have been added or canceled by this amendment. No new matter is involved with any claim amendment.

Priority Claim

Applicant has submitted a Supplemental Application Data Sheet (ADS) by separate correspondence to clarify the complete chain of foreign priority and chain of domestic benefit, and to change or add other items of an administrative nature, e.g., a new attorney docket number and Customer Number for correspondence.

This application is a Division of US 09/101,748, now issued as US Patent 6,467,039. US 09/101,748 was a National Stage Entry under the PCT of International Application PCT/SE97/00211, filed on February 12, 1997. International Application PCT/SE97/00211 claimed Box VI priority to Swedish Applications SE 9600652-3 and SE 9600653-1. The Supplemental Application Data Sheet clarifies this situation.

Accordingly, Applicant submits that copies of the Swedish priority applications are not required to be submitted under the Patent Rules in 37 C.F.R., since the present application is a Divisional application under 35 U.S.C. §§ 120 and 121, and since the parent application was a National Stage of a PCT application, for which the International Bureau had responsibility for provision of copies of the priority applications.

Withdrawal of the requirement to file a certified copy of each priority application is therefore requested.

Drawing Objections

Withdrawal of the objection to the drawings is requested. The Specification has been amended in a manner that is believed to substantially overcome the majority of the stated bases

for drawing objection, *i.e.*, inconsistency between the reference numbers in the Specification and Drawings.

A substitute Specification is provided as an attachment to this Amendment. No new matter is involved with any Specification amendment or the Substitute Specification.

In addition, Figures 8 and 10a have been amended for clarity in a manner that is believed to overcome any remaining bases for objection, by adding a reference number on FIG. 8 to correspond with the originally-filed Specification, and to remove a “box” around reference number “107” in FIG. 10a. No new matter is involved with any Drawing Amendment or Replacement Drawing Sheet.

Entry of the Replacement Drawing Sheets and Substitute Specification is respectfully requested.

Specification Objections

Withdrawal of the objection to the Specification is requested.

The “Description of the Figures” section has been amended to include a description of FIGS. 10a and 10b, as required by the Examiner. The added text may be found in the originally-filed application. No new matter is involved with this amendment.

Secondly, Applicant does not understand how the Examiner can, on one hand, admit that various acronyms are “well known in the art”, and then require that these various admittedly well-known conventional acronyms be defined in the Specification.

However, in an effort to expedite prosecution of this application, the Specification has been amended in a manner that is believed to be responsive to the Examiner’s stated bases for objection. These changes are reflected in the Substitute Specification provided as an attachment

to this Amendment. No new matter is involved with any Specification amendment or the Substitute Specification.

Claim Objection

Withdrawal of the objection to claim 1 is requested. Although claim 1 is not present in this application, it appears that the Examiner may have been referring to independent claim 11.

Responsive to the objection, claim 11 has been amended, *inter alia*, to include a spelled-out version of the well-known acronym “CAN”, *i.e.*, “Controller Area Network”.

Anticipation Rejection over Jurewicz et al.

Withdrawal of the rejection of claims 11-13, 23, and 25-27 under 35 U.S.C. §102(b) as being anticipated by Jurewicz et al. (US 5,323,385) is requested.

Applicant notes that anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims.¹ There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. §102.² To properly anticipate a claim, the reference must teach every element of the claim.³ “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”.⁴ “The identical invention must be shown in as complete detail as is contained in the ...claim.”⁵ In determining anticipation, no claim limitation may be ignored.⁶ The applied art fails to meet this threshold.

¹ *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

² *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991).

³ See MPEP § 2131.

⁴ *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

⁵ *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

⁶ *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 187 (Fed. Cir. 1990).

While Jurewicz et al. utilize the CAN protocol to communicate in a refrigeration system via a serial data bus, the similarity between the applied art and Applicant's claimed invention ends there.

In particular, the applied art does not disclose a system for radio-controlling machines operating with the Controller Area Network (CAN) protocol, wherein the system includes, among other features, "...a number of machines that each have a radio communication means for communicating with another of said radio communication means...a key allocation means for determining which of said machines may communicate through a particular instance of a message channel established between a subset of said machines and a master control system or between a subset of said machines alone, said key allocation means dynamically assigning each of said machines, within the subset of machines assigned to a message channel, a unique identification during each instance of an established message channel; wherein...said identification is based not upon the real identity of said machine, but is dynamically assigned during a communicative coupling between said master control system and said module within said machine or between a plurality of modules in separate machines...", as recited in independent claim 11, as amended.

For example, Jurewicz et al. do not disclose radio communication means for *each* of a number of machines. At best, the applied art discloses a radio transmitter connected to central communication node 12 via input/output board 22 and modem 24. See col. 3, lines 18-23. Even if this provides adequate disclosure of a radio transmitter, it is a single transmitter shared with all the "machines" shown in FIG. 1 of Jurewicz et al.

As a further example, Jurewicz et al. also do not disclose a key allocation means as recited above. The Examiner has merely repeated the claim language in the rejection, and refers to the entirety of column 3 of Jurewicz et al. without providing any clarity or pinpoint citation to the applied art.

In contrast to Applicant's claimed dynamic assignment of a unique identification, Jurewicz et al. discloses in FIG. 2 and associated text at column 4 that each machine is given a *fixed* 11-bit identifier, and does not "dynamically assign[] each of said machines, within the subset of machines assigned to a message channel, a unique identification during each instance of an established message channel", as recited by Applicant.

Accordingly, since the applied art does not disclose all the claim limitations, reconsideration and withdrawal of the anticipation rejection of claim 11 are respectfully requested.

In addition, since dependent claims 12-27 variously and ultimately depend from allowable independent claim 11, these claims are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

Unpatentability Rejection over Jurewicz et al. in View of Spaur et al.

Withdrawal of the rejection of claims 14 and 16-18 under 35 U.S.C. §103(a) as being unpatentable over Jurewicz et al. in view of Spaur et al. (US 5,732,074) is requested.

At the outset, Applicant notes that, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.⁷ Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.⁸

⁷ See MPEP §2143.

⁸ *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and See MPEP §2143.

An essential evidentiary component of an obviousness rejection is a teaching or suggestion or motivation to combine the prior art references.⁹ Combining prior art references without evidence of a suggestion, teaching or motivation simply takes the inventors' disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight.¹⁰

“There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.”¹¹ Further with regard to the level of skill of practitioners in the art, there is nothing in the statutes or the case law which makes “that which is within the capabilities of one skilled in the art” synonymous with obviousness.¹² The level of skill in the art cannot be relied upon to provide the suggestion to combine references.¹³

First, Applicant submits that Spaur et al. does not make up for the previously identified deficiencies of Jurewicz et al. discussed above with respect to independent claim 11.

In addition, Spaur et al. does not teach or suggest that “the machine can detect when the radio module is connected or activated, and the machines radio communication means adopts the identification of another particular module in the machine”, as recited in dependent claim 14.

Further, and contrary to the Examiner's assertions, Spaur et al. does not teach or suggest that “the assignment of identifications is carried out by a system node selected within the device, which system node is aware of all nodes forming part of the device and in which no node can be connected or exchanged or work within the device without the consent or knowledge of the system node”, as recited in dependent claim 16. Claims 17 and 18 depend from claim 16.

⁹ *C.R. Bard, Inc. v. M3 Systems, Inc.*, 48 USPQ2d 1225 (Fed. Cir. 1998)

¹⁰ *Interconnect Planning Corp. v. Feil*, 227 USPQ 543 (Fed. Cir. 1985)

¹¹ See MPEP §2143.01, citing *In re Rouffet*, 149 F.3d, 1350, 1357, 47 USPQ2d 1453, 1457-8 (Fed. Cir. 1998).

¹² *Ex parte Gerlach and Woerner*, 212 USPQ 471 (PTO Bd. App. 1980).

¹³ See MPEP §2143.01, citing *Al-Site Corp. v. VSI Int'l Inc.*, 50 USPQ2d 1161 (Fed. Cir. 1999).

The lengthy portion of the Spaur et al. reference cited by the Examiner, essentially the entirety of cols. 2 and 10 of the Spaur et al. patent, is completely silent on providing a teaching or suggestion of the limitations discussed above.

Accordingly, since the applied art does not teach or suggest all the claimed limitations, withdrawal of the rejection and allowance of claims 14 and 16-18 are requested.

Unpatentability Rejection over Jurewicz et al.

Withdrawal of the rejection of claims 15 and 24 under 35 U.S.C. §103(a) as being unpatentable over Jurewicz et al. is requested. The legal requirements for unpatentability have been set forth above.

As admitted by the Examiner, Jurewicz et al. does not teach or suggest the limitations of claims 15 and 24. The Examiner improperly relies upon the taking of “Official Notice” that the limitations of these claims were “conventional and well-known”. Applicant respectfully traverses the Examiner’s invocation of Official Notice regarding allegedly “well-known” or “conventional” features.

Applicant submits that it is not “well-known” to “allocate[] a public key identification, common to machines incorporated within an area, or a unique key identification, which therefore is based upon the identity of a particular module forming part of the machines which communicate by radio among themselves” as recited in dependent claim 15, or for “a plurality of remote control units [to] each serve their own part-area within a work area, and in that, where a mobile unit is within the area, control over the mobile unit is passed from one remote control unit to another remote control unit as it passes through a part-area border”, as recited in dependent claim 24. These limitations are submitted as not being common knowledge or well-known in the art, except through improper use of Applicant’s disclosure against them.

As set forth in MPEP §2144.03, the taking of “Official Notice” is only appropriate in limited circumstances to notice facts not in the record or to rely on “common knowledge” in making a rejection, and that such rejections should be judiciously applied.

Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. *See Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is “basic knowledge” or “common sense” to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection).

However, if Applicant challenges a factual assertion as not being proper “Official Notice” or based upon common knowledge, the MPEP requires that the Examiner *must* support the finding with adequate evidence by providing documentary evidence in the next Office action if the rejection is to be maintained. *See* 37 CFR 1.104(c)(2). *See also Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner *must* provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. *See* 37 CFR 1.104(d)(2).

Accordingly, since the applied art does not teach or suggest all the claimed limitations, withdrawal of the rejection and allowance of claims 15 and 24 are respectfully requested.

Unpatentability Rejection over Jurewicz et al. in View of Newlin et al.

Withdrawal of the rejection of claim 19 under 35 U.S.C. §103(a) as being unpatentable over Jurewicz et al. in view of Newlin et al. (US 5,636,211) is requested. The legal requirements for unpatentability have been set forth above.

Applicant submits that Newlin et al. does not make up for the previously identified deficiencies of Jurewicz et al. discussed above with respect to independent claim 11.

Accordingly, since the applied art does not teach or suggest all the claimed limitations, withdrawal of the rejection and allowance of claim 19 are respectfully requested.

Unpatentability Rejection over Jurewicz et al. and Spaur et al. in View of Braun

Withdrawal of the rejection of claims 20-21 under 35 U.S.C. §103(a) as being unpatentable over Jurewicz et al. and Spaur et al. in view of Braun (US 5,455,762) is requested. The legal requirements for unpatentability have been set forth above.

Applicant submits that Braun does not make up for the previously identified deficiencies of Jurewicz et al. discussed above with respect to independent claim 11.

Accordingly, since the applied art does not teach or suggest all the claimed limitations, withdrawal of the rejection and allowance of claims 20-21 are respectfully requested.

Unpatentability Rejection over Jurewicz et al. in View of Braun

Withdrawal of the rejection of claim 22 under 35 U.S.C. §103(a) as being unpatentable over Jurewicz et al. in view of Braun (US 5,455,762) is requested. The legal requirements for unpatentability have been set forth above.

Applicant submits that Braun does not make up for the previously identified deficiencies of Jurewicz et al. discussed above with respect to independent claim 11.

Accordingly, since the applied art does not teach or suggest all the claimed limitations, withdrawal of the rejection and allowance of claim 22 are respectfully requested.

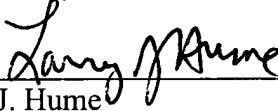
Conclusion

In view of the above amendment and remarks, applicant believes that each of pending claims 11-27 in this application is in immediate condition for allowance.

In the event the Examiner believes that an interview would be helpful in resolving any outstanding issues in this case, the undersigned attorney is available at the telephone number indicated below.

For any fees that are due, including fees for extensions of time, please charge CBLH Deposit Account No. 22-0185 under Order No. 20260-00044-US3, from which the undersigned is authorized to draw.

Respectfully submitted,

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Attachments: Replacement Drawing Sheets (2 sheets - FIGS. 8 and 10a)
Substitute Specification (with changes)
Substitute Specification ("clean" version)

AMENDMENTS TO THE DRAWINGS

Due to the numerous typographical corrections made to the Specification by Substitute Specification, the number of required drawing corrections have been greatly reduced.

Remaining inconsistency have been addressed by amendments to the Drawings have been provided as attached Replacement Drawing Sheets for FIGS. 8 and 10a.

Applicant believes that each objection raised by the Examiner has been addressed either by amendment to the Specification and/or replacement drawing sheets.

No new matter is involved with submission of any Specification or Drawing amendment.

Attachments: Replacement Drawing Sheets (2 sheets - FIGS. 8 and 10a)